

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



HOWARD O. WATTS,)	
)	
Complainant,)	Case No. LA-PN-89
)	
v.)	PERB Order No. Ad-162
)	
LOS ANGELES UNIFIED SCHOOL DISTRICT,)	February 5, 1987
)	
Respondent.)	
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Appearance: Howard O. Watts, on his own behalf.

Before Hesse, Chairperson; Burt and Craib, Members.

DECISION

CRAIB, Member: On March 31, 1986, Howard O. Watts filed a complaint with the Los Angeles Regional Office of the Public Employment Relations Board (PERB or Board) alleging that the Los Angeles Unified School District (LAUSD or District) had violated the public notice provisions of the Educational Employment Relations Act (EERA)¹ when it adopted, on March 3, 1986, an initial school calendar proposal. The school calendar proposal was originally sunshined by the District on February 3. Public response time was provided by the District at its regular February 11 and February 24 meetings.

¹The EERA is codified at Government Code section 3540 et seq. All references are to the Government Code unless otherwise noted.

However, on March 3, the District amended its initial school calendar proposal and then voted to adopt it. Thus, charges Watts, there was no opportunity for the public to respond to the amended school calendar proposal. Watts also claims that in a settlement of an earlier case (LA-PN-77) the District promised to provide an opportunity for appropriate public response prior to adoption of the school calendar. The District's actions in this case allegedly violated the terms of that voluntary agreement as well as the EERA.

The PERB Los Angeles Regional Director subsequently concluded that the LAUSD violated EERA section 3547(a) (b) and (c)² and on June 9, 1986 served an order on the LAUSD

²Section 3547 provides in pertinent part:

(a) All initial proposals of exclusive representatives and of public school employers, which relate to matters within the scope of representation, shall be presented at a public meeting of the public school employer and thereafter shall be public records.

(b) Meeting and negotiating shall not take place on any proposal until a reasonable time has elapsed after the submission of the proposal to enable the public to become informed and the public has the opportunity to express itself regarding the proposal at a meeting of the public school employer.

(c) After the public has had the opportunity to express itself, the public school employer shall, at a meeting which is open to the public, adopt its initial proposal.

directing the District to cease and desist from failing to present at public meetings the amendment of initial proposals dealing with the school calendar and failing to provide a reasonable time thereafter to enable the public to become informed and have an opportunity to express itself regarding such proposals. The District was also ordered to post a notice and to inform the PERB Los Angeles Regional Director of actions it has taken to comply with the order.³

Rather than go to hearing, the District complied with the PERB order. Finding that the LAUSD complied, PERB dismissed the complaint pursuant to Regulation 32920(b)(7).⁴ On August 11, 1986, Watts appealed the Regional Director's dismissal pursuant to Regulation 32925.

The gist of Watts' appeal is that "the local office of the Public Employment Relations Board used a cease and desist order to correct violations of the Act by the Board of Education, in essence the PERB slapped the wrists of the staff but did nothing to the individual members of the Board or the Board of Education as a whole." Watts implies that the remedy ordered by the PERB is inadequate in light of the District's refusal to

³The June 9th letter from PERB to the LAUSD incorrectly refers to PERB Decision No. 527. The correspondence from the District also erroneously refers to Decision No. 527. Decision No. 527 is another public notice case involving the Los Angeles Unified School District. It is not related to this case.

⁴PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq.

abide by the terms of the earlier settlement agreement. In spite of this, Watts does not propose a remedy himself. For the reasons which follow, we affirm the dismissal of the regional director.

DISCUSSION

In this case, the record reveals that the public had two opportunities to speak on the initial school calendar proposal. However, on March 3, the initial proposal was amended and on the same day the District adopted the amended school calendar proposal. Thus, there was no opportunity for the public to speak on the amendment prior to its adoption.⁵ While we agree that adoption of the amended calendar on March 3 appears to have violated section 3547(b), we note there was opportunity to discuss the substantive aspects of the initial calendar proposal and to that extent the harm is lessened. This has some weight in concluding that the District's voluntary compliance with a cease and desist order and an order to post is a sufficient remedy.

Regulation 32920 subsections (b)(5) and (b)(7)⁶ permit and encourage voluntary resolution of public notice

⁵The minutes of the March 3 LAUSD meeting indicate that the Committee of the Whole Report Number Three was amended "by adding a footnote to include any new year-round calendar such as a four or five-term calendar approved by the Board under the priority housing program." It appears that this amendment did not alter the calendar proposals already noticed but provided for inclusion in the report of other calendars approved by the board.

⁶Regulation 32920(b) states in pertinent part:

The powers and duties of such Board agent shall be to:

complaints. Los Angeles Unified School District (1985) PERB Decision No. 506, the Board stated that:

Regulation 32920(b)(4) shows clear approval of the use of voluntary compliance to dispose of an EERA complaint. We interpret Regulation 32920(g) literally; the use of the disjunctive "or" means that if complainant fails to withdraw the complaint once the Board agent has found the respondent has voluntarily complied, the agent may dismiss the complaint.⁷

Moreover, the Board typically sustains dismissals where there has been voluntary compliance. Los Angeles Unified School District (Kimmettt) (1979) PERB Order No. Ad-53, Los Angeles Community College District (Watts) (1980) PERB Decision No. 153, PERB Decision No. 506, supra. The regional director's decision to dismiss the complaint because the District voluntarily complied is in accord with PERB policy and precedent.

(5) Explore the possibility of and facilitate the voluntary compliance and settlement of the case through informal conferences or other means;

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(7) If the Board agent receives proof that the respondent has voluntarily complied with the provisions of Government Code sections 3547 or 3595, a Board agent may either approve the complainant's withdrawal of the complaint or dismiss the complaint.

⁷Former Regulations 32920(b)(4) and 32920(g) have subsequently been renumbered and are now 32920(b)(5) and (b)(7) respectively.

Although Watts argues that the District violated earlier assurances to provide the public with an opportunity to be heard, we are not convinced, based on the facts of this case, that the District engages in a pattern or practice of noncompliance with section 3547. As noted above, the public had an opportunity to discuss substantive calendar issues, albeit there was no opportunity for the public to be heard on the amendment. Further, the District's willingness to voluntarily comply eliminated delay and thereby minimized any consequence of the District's earlier failure to comply with section 3547. We therefore do not believe that some unspecified extraordinary relief is warranted.

ORDER

For the reasons stated above, the Board DENIES Howard O. Watts' appeal and AFFIRMS the dismissal of case number LA-PN-89.

Chairperson Hesse and Member Burt joined in this Decision.